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Attorneys for Defendants World
Wrestling Entertainment, LLC, and
Fanatics LLC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WESLEY EISOLD, an individual,
Plaintiff,

vs.

CODY GARRETT RUNNELS, an
individual, WORLD WRESTLING
ENTERTAINMENT, LLC, a limited
liability company; and FANATICS,
LLC, a limited liability company,

Defendant.

Case No.: 2:24-CV-07516-AB(MARx)
[Hon. André Birotte Jr.]

**DEFENDANTS WORLD
WRESTLING ENTERTAINMENT
LLC AND FANATICS, LLC'S**

**REQUEST FOR JUDICIAL
NOTICE**

**[NOTICE OF MOTION AND
MOTION TO DISMISS FILED
CONCURRENTLY HEREWITH]**

HEARING

DATE: JAN. 24, 2025
TIME: 10:00 A.M.
CTRM: 7B

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TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on January 24, 2025, at 10:00 a.m., or as soon thereafter as this matter may be heard before the Honorable André Birotte Jr. in Courtroom 7B, located at the U.S. District Court for the Central District of California at 350 West First Street, Los Angeles, California 90012, Defendants World Wrestling Entertainment, LLC (“WWE”) and Fanatics, LLC (“Fanatics”) (WWE and Fanatics are hereinafter referred to, together, as “Defendants”), will and hereby do request, pursuant to Federal Rule of Evidence 201(b), the Court to take judicial notice of the facts set forth in the following Exhibits, attached to, or linked within, this Request for Judicial Notice:

<u>Request No.</u>	<u>Exhibit</u>	<u>Description</u>
1	A	U.S. Patent & Trademark Office Records for U.S. Trademark Registration Nos. 3538710, 4625255, 3412176, 4689835, 2772683, 4538210, and 4689839.
2	B	U.S. Patent & Trademark Office Records for U.S. Trademark Registration No. 6256132.
3	C	Defendant Cody Runnels’ Skull Mark Neck Tattoo – as seen in specimens of use for U.S. Patent & Trademark Office Records for U.S. Trademark Registration No. 6397093.

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<u>Request No.</u>	<u>Exhibit</u>	<u>Description</u>
4	D	Publications from the Encyclopedia Britannica, the New York Times, and The Sportster regarding Cody Runnels and his Skull Mark neck tattoo.
5	E	Published videos on YouTube demonstrating what was, and was is, in the public record with respect to Cody Runnels' dog, Pharaoh, along with the dog's connection to wrestling. The videos are linked within this Request for Judicial Notice. Defendants shall lodge the videos with the Court in the Court's preferred format upon request.

Dated: November 22, 2024

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I. INTRODUCTION

World Wrestling Entertainment, LLC (“WWE”) and Fanatics, LLC (“Fanatics”) (WWE and Fanatics are hereinafter referred to, together, as “Defendants”) request this Court take judicial notice of Exhibits A-E discussed herein (the “Exhibits”) in support of Defendants’ Notice of Motion and Motion to Dismiss which is filed concurrently herewith. The Exhibits include publicly available administrative and government records from the U.S. Patent and Trademark Office (“USPTO”), as well as publicly available information, images, and videos related to defendant Cody Runnels. The authenticity of each Exhibit is not subject to reasonable dispute, and judicial notice is proper in these circumstances.

II. LEGAL STANDARD

When considering a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court typically does not look beyond the complaint in order to avoid converting the motion to dismiss into a motion for summary judgment. *See Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). Notwithstanding this precept, a court may properly take judicial notice of (1) material which is included as part of the complaint or otherwise relied upon by the complaint, and (2) matters in the public record. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001).

A court also may take judicial notice pursuant to Federal Rule of Evidence 201(b). Under the rule, a judicially noticed fact must be one that is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). A court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *See Fed. R. Evid. 201(c)(2); In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014).

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Records from administrative agencies are generally subject to judicial notice. *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953). And in trademark litigation, courts routinely take judicial notice of records from the USPTO. *Dahon N. Am., Inc. v. Hon*, No. 2:11-cv-05835, 2012 WL 1413681, at *8, n.4 (C.D. Cal. April 24, 2012) (taking judicial notice of USPTO trademark assignment records); *see also Marketquest Group, Inc. v. BIC Corp.*, 316 F. Supp. 3d 1234, 1252 (S.D. Cal. 2018); *Bennett v. Forbes*, No. 17-cv-464, 2017 WL 4557215, at *2 (S.D. Cal. Oct. 12, 2017). Courts may also take judicial notice of publications where they are introduced to indicate what was in the public realm at the time. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010); *Heliotrope Gen. Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.1 18 (9th Cir. 1999) (taking judicial notice “that the market was aware of the information contained in news articles submitted by the defendants.”).

III. ARGUMENT

Defendants request the Court take judicial notice of four Exhibits that include government records. These include the following:

Exhibit A – USPTO prosecution records for U.S. Trademark and Service Mark Registration Nos. 3538710, 4625255, 3412176, 4689835, 2772683, 4538210, and 4689839.

Exhibit B – USPTO prosecution records for U.S. Trademark Registration No. 6256132.

Exhibit C – USPTO prosecution records, including specimens of use, for U.S. Trademark Registration 6397093

Exhibit D – Publications from the Encyclopedia Britannica, the New York Times, and The Sportster related to Cody Runnels’ neck tattoo.

Exhibit E – Published videos on YouTube demonstrating what was, and is, in the public record with respect to Cody Runnels’ dog, Pharaoh, along with the dog’s connection to wrestling.

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1 With regard to Exhibits A-C referenced above, Defendants request the Court
2 take judicial notice of the USPTO prosecution histories for the federal trademarks and
3 service marks implicated by the First Amended Complaint (“FAC”), whether that is
4 through direct inclusion in the FAC’s numbered paragraphs, or otherwise through
5 inclusion in the FAC’s accompanying exhibits, such as Exhibits 5 and 6. *See* FAC [Dkt.
6 23]. Prosecution histories of trademark applications and registrations are available on
7 the Trademark Status and Document Retrieval (TSDR) database on the USPTO
8 website, which is located at <https://tsdr.uspto.gov/>. *See Trademark Manual of*
9 *Examining Procedure*, §§ 108.01, 109.01 (October 2018). “Courts routinely take
10 judicial notice of PTO records in trademark litigation.” *Marketquest Group, Inc.*, 316
11 F. Supp. 3d at 1252 (S.D. Cal. 2018). The TSDR database, which is located on the
12 USPTO’s website, is an official record published by a government organization – the
13 USPTO. Therefore, the accuracy of this record cannot reasonably be questioned. *See*
14 *Dahon N. Am., Inc.*, 2:11-cv-05835, 2012 WL 1413681, at *8 n.4 (C.D. Cal. April 24,
15 2012).

16 With regard to Exhibit D referenced above, Defendants request the Court take
17 judicial notice of encyclopedia entries, news articles, and related entertainment
18 publications relating to Cody Runnels and his famous Skull Mark neck tattoo.
19 Specifically, Defendants request that the Court take judicial notice that information
20 regarding Cody Runnels’ Skull Mark tattoo was publicly disseminated. *Von Saher*, 592
21 F.3d at 960 (taking judicial notice of news articles and publications).

22 Exhibit E contains published YouTube videos of Cody Runnels and his dog,
23 Pharaoh. Defendants specifically introduce these videos to indicate what was, and what
24 is, in the public realm at the time with respect to Cody Runnels and his dog, Pharaoh,
25 along with the dog’s connection to wrestling. *Id.*; *see also Heliotrope Gen. Inc. v. Ford*
26 *Motor Co.*, 189 F.3d 971, 981 n.1 18 (9th Cir. 1999) (taking judicial notice “that the
27 market was aware of the information contained in news articles submitted by the
28 defendants.”).



A. Request No. 1 – WWE Trademark and Service Mark Records.

Defendants first request that the Court take judicial notice of USPTO prosecution history records for the below-referenced trademark and service mark registrations taken from, and still available online at, the TSDR database. *See* Exhibit A, attached hereto. Specifically, Defendants request that the Court take judicial notice that (a) WWE is the record owner of U.S. Trademark and Service Mark Registration Nos. 3538710, 4625255, 3412176, 4689835, 2772683, 4538210, and 4689839; and that (b) U.S. Trademark and Service Mark Registration Nos. 3538710, 4625255, 3412176, 4689835, 2772683, 4538210, and 4689839 reflect the following trademarks and/or service marks, registered in connection with the following goods and/or services:


Mark	Goods and/or Services	Status
WWE Reg. No. 3538710	<u>Class 25</u> : Clothing, namely, tank tops, t-shirts, shirts, sport shirts, dress shirts, polo shirts, undershirts, sweatshirts, sweaters, pullovers, blouses, jackets, raincoats, overcoats, topcoats, trousers, pants, jean pants, jogging suits, exercise pants, exercise suits, sweatpants, shorts, underwear, boxer shorts, socks, clothing ties, pajamas, belts, gloves, Halloween and masquerade costumes, wrist bands, bandannas; footwear, namely, shoes, sneakers, boots, slippers; headwear, namely, hats, caps	Incontestable
 Reg. No. 4625255	<u>Class 25</u> : Clothing, namely, tops, jackets, bottoms, underwear, pajamas; footwear, namely, shoes, sneakers, slippers; headwear, namely, hats	Incontestable
WWE Reg. No. 3412176	<u>Class 35</u> : Retail store services, on-line retail store services, mail order services featuring a wide variety of sports entertainment merchandise, all related to professional wrestling; advertising via electronic media and specifically the Internet	Incontestable

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Mark	Goods and/or Services	Status
 Reg. No. 4689835	<p><u>Class 35</u>: Retail store services, on-line retail store services, mail order services featuring a wide variety of consumer goods; advertising via electronic media and specifically the internet; Advertising and advertisement services; marketing and promotion services; arranging and conducting auctions; Charitable services, namely, organizing and conducting volunteer programs and community service projects and raising public awareness about breast cancer, veterans, terminal illnesses, anti-bullying, education, politics; Charitable services, namely, coordination of non-monetary contributions to charities and non-profits; Organizing and conducting charity auctions for charitable fundraising purposes; Contests and incentive award programs to promote the sale of products and services of others; Distribution of publicity materials, namely, flyers, prospectuses, brochures, samples, particularly for catalog long distance sales; Event planning and management for marketing, branding, promoting or advertising the goods and services of others; Internet advertising services; Magazine advertising; Maintaining a registry of sports memorabilia and works of art; On-line advertising on computer communication networks; On-line advertising and marketing services; On-line auction services; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; Providing an internet website featuring news and information in the field of business, advertisement and marketing</p>	Incontestable
WWE Reg. No. 2772683	<p><u>Class 41</u>: Entertainment services, namely, the production and exhibition of professional wrestling events rendered live and through the medium of television; providing wrestling news and information via a global computer network</p>	Incontestable
 Reg. No. 4538210	<p><u>Class 41</u>: Entertainment services, namely, a television show about sports entertainment; entertainment services, namely, the production and exhibition of professional wrestling events rendered live and through the media of television; entertainment services, namely, a television show about professional wrestling; entertainment services, namely, wrestling-related on-going reality based television program; entertainment services, namely, a television show about entertainment; entertainment services, namely, an on-going reality television show; providing wrestling news and information via a global computer network; entertainment services, namely, provision of entertainment information and news; entertainment services, namely, provision of entertainment information and news via a global computer network</p>	Incontestable

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Mark	Goods and/or Services	Status
 Reg. No. 4689839	Class 41: Entertainment services, namely, television shows about sports, entertainment and general interest rendered live and through broadcast media including television and radio, and via the internet or commercial online service; entertainment services, namely, the production and exhibition of professional wrestling events rendered live and through broadcast media including television and radio, and via the internet or commercial online service; entertainment services, namely, on-going reality based television programs rendered live and through broadcast media including television and radio, and via the internet or commercial online service; providing entertainment and sports news and information via a global computer network or commercial online service; entertainment services, namely, provision of information and news about sports, entertainment and general interest rendered live and through broadcast media including television and radio, and via the internet or commercial online service; providing information in the fields of sports, entertainment and general interest via an online community portal; providing a website featuring news and information in the field of sports, entertainment and general interest; fan club services, organizing and staging sporting events with fan club members, promoting the interest and participation of fan club members in the field of sports and entertainment, and providing an online community forum for fan club members; Providing online newsletters in the fields of sports entertainment; online journals, namely, blogs, in the fields of sports entertainment; entertainment and educational services, namely, ongoing multimedia programs in the field of general human interest, distributed via various platforms across multiple forms of transmission media; providing entertainment information regarding ongoing television programs via a global computer network; production of television programs; production of multimedia programs, in the field of sports, entertainment, popular culture, film and general human interest	Incontestable


No parties can reasonably question the accuracy of the USPTO prosecution histories or their resultant registration certificates. As such, this Court may take judicial notice of these records.

B. Request No. 2 – Cody Runnels’ Skull Design Mark

Defendants next request that the Court take judicial notice of USPTO prosecution history records for U.S. Trademark Registration No. 6256132 which were taken from, and still available online at, the TSDR database. *See* Exhibit B, attached hereto. Specifically, Defendants request that the Court take judicial notice that (a) Cody Runnels is the record owner of U.S. Trademark Registration No. 6256132; (b) that U.S.

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Trademark Registration No. 6256132 contains no color claim; (c) that U.S. Trademark Registration No. 6256132 was registered on January 26, 2021; (d) that in U.S. Trademark Registration No. 6256132, Cody Runnels claims a date of first use of July 2018 for the Class 25 goods and August 2018 for the Class 41 wrestling-related services; and that (e) U.S. Trademark Registration No. 6256132 reflect the following design mark, registered in connection with the following goods and wrestling-related services:

Mark	Goods and/or Services	Status
 <p>Reg. No. 6256132</p>	<p><u>Class 25</u>: Bandanas; Hats; Shirts; Sweatshirts; Ties as clothing; Hooded sweatshirts</p> <p><u>Class 41</u>: Entertainment in the nature of wrestling contests; Entertainment services, namely, live appearances by a professional wrestling and sports entertainment personality; Entertainment services, namely, personal appearances by a professional wrestler and sports entertainment personality; Entertainment services, namely, wrestling exhibits and performances by a professional wrestler and entertainer; Providing wrestling news and information via a global computer network; Providing online interviews featuring a professional wrestler and sports entertainer in the field of professional wrestling and sports entertainment for entertainment purposes</p>	Registered

Once again, no parties can reasonably question the accuracy of the USPTO prosecution histories or their resultant registration certificates. As such, this Court may take judicial notice of these records.

C. Request No. 3 – Prosecution Records for U.S. Reg. No. 6397093.

Defendants also request that the Court take judicial notice of USPTO prosecution history records for U.S. Trademark Registration No. 6397093 which were taken from, and still available online at, the TSDR database. *See* Exhibit C. Specifically, Defendants request that the Court take judicial notice that (a) Cody Runnels is the record owner of U.S. Trademark Registration No. 6397093; (b) that on May 4, 2021, Cody Runnels, by and through counsel, filed specimens of use that include images of Cody Runnels and his prominent neck tattoo, which is an image of

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1 the design mark reflected in U.S. Trademark Registration No. 6256132 (the “Skull
2 Mark”) and also seen in designs included by Plaintiff in Exhibit 6 to the FAC. *See* FAC
3 [Dkt. 23], Exhibit 6. And because no parties can reasonably question the accuracy of
4 the USPTO prosecution histories or the verified documents filed with the USPTO and
5 reflected in the TSDR records, this Court may take judicial notice of these records and
6 their contents.

7 ***D. Request No. 4 – Publications Related to Cody Runnels’ Skull Mark***
8 ***Tattoo.***

9 Exhibit D contains publications from (1) the Encyclopedia Britannica (Exhibit
10 D-1), (2) the New York Times (Exhibit D-2), and (3) The Sportster (Exhibit D-3). Each
11 individual publication contains relevant information about, or otherwise images of,
12 Cody Runnels and, more specifically, his now famous neck tattoo, which is an image
13 of the Skull Mark, as defined above.

14 With regard to Exhibit D-1, the Encyclopedia Britannica contains an image of
15 Cody Rhodes and his Skull Mark neck tattoo. Exhibit D-2 similarly contains an image
16 of Cody Runnels’ and his neck tattoo, along with more specific information related to
17 the tattoo. Finally, Exhibit D-3 an in-depth overview of “the story behind Cody
18 Rhodes’ infamous neck tattoo,” along with striking images of the Skull Mark.

19 Defendant requests that the Court take judicial notice that the aforementioned
20 encyclopedias, newspapers, and entertainment sources (seen in Exhibits D-1, D-2, and
21 D-3) have publicly disseminated information related to Cody Runnels’ neck tattoo,
22 along with actual images of the neck tattoo which, as mentioned above, is an image of
23 the Skull Mark. *See Von Saher*, 592 F.3d at 960 (taking judicial notice of press releases
24 and news articles to “indicate what was in the public realm at the time”).

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1 **5. *Exhibit E – Published YouTube videos related to Cody Runnels’ Dog.***

2 Exhibit E¹ contains four independent videos which have been published on
3 YouTube (either by WWE or by third parties) that relate to Cody Runnels’ and his dog,
4 Pharaoh.

5 Exhibit E-1 includes a video posted by WWE on June 26, 2023, which shows
6 Cody Runnels kneeling behind his dog, Pharaoh, who made his debut appearance on
7 WWE’s Monday Night RAW wrestling event wearing a bandana emblazoned with
8 Cody Runnels’ Skull Mark (as defined above). The video is independently accessible
9 at the following link: <https://www.youtube.com/watch?v=3lvp76knUto>.

10 Exhibit E-2 includes a video posted by WWE on February 2, 2024, which shows
11 Cody Runnels and his dog, Pharaoh, making an appearance at WWE’s Friday Night
12 Smackdown wrestling event. The video is independently accessible at the following
13 link: https://www.youtube.com/watch?v=I_jvVXxOfSM.

14 Exhibit E-3 includes a video posted by WWE on March 4, 2024, which shows
15 Cody Runnels addressing a crowd of wrestling fans at a live WWE wrestling event. In
16 the video, Cody Runnels, and his famous neck tattoo (as discussed above), is seen
17 specifically discussing his dog, Pharaoh. The video is independently accessible at the
18 following link: https://www.youtube.com/watch?v=S5O4E_B5cNQ.

19 Exhibit E-4 includes a video posted by a third party on May 1, 2024, which
20 shows video clips from the WWE 2K24 video game which permits players to wrestle
21 as Cody Runnels’ dog Pharaoh, who is wearing a bandana emblazoned with the Skull
22 Mark (as defined above). The video also includes video clips showing the Skull Mark
23 in several other locations. The video is independently accessible at the following link:
24 <https://www.youtube.com/shorts/agtMnYdsg6Y>.

25 Defendant specifically requests that the Court take judicial notice that the videos,
26 which include Cody Runnels’ dog Pharaoh, were disseminated publicly. *See Von*
27

28 ¹ In addition to the links included in this section, Defendants shall lodge the videos in Exhibits E in the Court’s preferred format at the Court’s request.

1 *Saher*, 592 F.3d at 960; *see also Sotoodeh v. City of W. Covina*, No. CV 22-07756-
2 MWF (KSx), 2024 U.S. Dist. LEXIS 164747, at *3 (C.D. Cal. Aug. 13, 2024).

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should take judicial notice of Exhibits A
5 through E, which are being proffered as evidence supporting Defendants' Notice of
6 Motion and Motion to Dismiss for failure to state a claim filed concurrently with this
7 Request for Judicial Notice.

8
9 Dated: November 22, 2024

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10
11 /s/ Stacey H. Wang
12 Stacey H. Wang
13 Danielle N. Garno

14 *Attorneys for Defendants WWE and Fanatics*
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